



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/838,910	04/11/1997	AKIO TANAKA	235648	9419

7590 01/02/2004

MICHELLE N. LESTER, ESQ.
NIXON & VANDERHYE, P.C.
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

EXAMINER

OLSEN, KAJ K

ART UNIT	PAPER NUMBER
----------	--------------

1753

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/838,910

Applicant(s)

TANAKA ET AL.

Examiner

Kaj Olsen

Art Unit

1753

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 21-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15, 21-31, 36 and 37 is/are allowed.
- 6) ☒ Claim(s) 32, 34 and 35 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 43.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Information Disclosure Statement

1. The Office's previous Notice of Allowability is withdrawn in view of the applicant's submitted IDS of 11-07-2002, which introduced a new grounds for rejection (see below for details).

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 32, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-235,713 (hereafter "JP '713") in view of Shibata et al (USP 4,582,657) with evidence provided by the instant invention. JP '713 was submitted by the applicants on 11-7-2002. Shibata is being cited and relied on for the first time with office action.

4. JP '713 discloses an oxygen concentration detector that comprises a sensor element including a solid electrolyte 1 and external and internal electrodes (2a, 2b) provided on the surfaces of the electrolyte (fig. 2). JP '713 further discloses a heater 5 disposed adjacent to the internal electrode where the heater has a material 7 comprises of high emissivity, which would impart a high emissivity on the heater itself (see abstract). Although the reference does not explicitly recite the emissivity of the material to be 0.6 or greater, the instant invention evidences that the materials described in paragraph 0010 inherently have said emissivities (see tables 1 and 2). JP '713 also shows a clearance between the heater and the internal electrode, but does not explicitly recite what that clearance would be. The clearance is the same as the width of the

Art Unit: 1753

internal reference gas passage. Shibata teaches that a conventional reference gas passage would have a gap of at least 0.1 mm (col. 9, lines 8-20). It would have been obvious to one of ordinary skill in the art at the time the invention was being made to utilize the teaching of Shibata for the clearance shown by JP '713 because the substitution of one known clearance for another requires only routine skill in the art.

5. With respect to claim 34, because JP '713 already recognized the utility of high-emissivity layers for gas sensors, one possessing ordinary skill in the art would have recognized that other materials possessing high-emissivity (such as the materials of claim 34) would also have found utility for the layer. The substitution of one known material for another requires only routine skill in the art.

Allowable Subject Matter

6. Claims 12-15, 21-31, 36 and 37 remain allowed.

7. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (571) 272-1344. The examiner can normally be reached on Monday through Thursday from 7:00 AM-4:30 PM. The examiner can also be reached on alternate Fridays.

Art Unit: 1753

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Nam Nguyen, can be reached at (571) 272-1342.

When filing a fax in Group 1700, please indicate in the header "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of this application. This will expedite processing of your papers. The fax number for regular communications is (703) 305-3599 and the fax number for after-final communications is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'Kaj K. Olsen', with a long horizontal stroke extending to the right.

Kaj K. Olsen
Primary Examiner
AU 1753
December 24, 2003